IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24529, 24531. 24532 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIVISIONAL CONTROLLER G S R T C - Petitioner(s)
Versus
CHAMPAKLAL P VYAS - Respondent(s)

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Appearance :
MS SEJAL K MANDAVIA for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
MRS NISHA M PARIKH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 16/03/2006

ORAL JUDGMENT

1. Heard the learned Advocate, Ms.S.K.Mandavia, appearing on behalf of petitioner - Corporation and learned Advocate, Ms.Nisha M. Parikh, appearing on

behalf of respondents – workmen.

2. In these three matters, petitioner – Corporation has challenged the order passed by Controlling Authority as well as Appellate Authority under the Payment of Gratuity Act.

3. This Court has issued Rule on 26th December,2005 and notice as to interim relief made returnable on 7th March,2006. Meanwhile, amount deposited by petitioner – Corporation before the Controlling Authority is directed to be invested in a nationalized bank for a period of 3 years, which shall been renewed from time to time till disposal of these petitions. Both the learned Advocates have agreed to decide these three matters finally and on their consent, these three matters are taken up for final hearing today.

4. The short question arises for consideration by this Court is that, if workmen are dismissed from service by the Corporation and that workmen are

reinstated either in Appeal or by Labour Court or any other Authority in service, then, whether interim period from date of dismissal to date of reinstatement should have to be taken into account as a qualifying service for the purpose of calculating the gratuity or not. On this short issue, these three petitions have been filed by the Corporation before this Court. Learned Advocate, Ms.S.K.Mandavia, vehemently submitted that according to settlement dated 26th February,1971, Item No.5(b)(2), five years' service must be satisfied first by the workman, then only he entitled the benefit of the said settlement. Meaning thereby, before reinstatement of the workman, he must have completed five years' service. Otherwise this clause is not applicable to the workman. She submitted that when the order of reinstatement was passed by the Court or the Corporation, at that occasion, none of the workmen had completed five years' service and, therefore, workmen are not entitled the benefit of qualifying service as agreed in settlement dated 26th February,1971.

5. Learned Advocate, Ms.Nisha Parikh, appearing on behalf of respondents, submitted that according to terms of settlement, the whole object was to consider the interim period as a qualifying service irrespective of the fact whether workman had completed five years' service at the time of reinstatement or not. Therefore, her submission is that five years' qualifying service is a provisions of the Act, which was incorporated in the settlement, but that does not mean that at the time of reinstatement, workman must have to satisfy the criteria of five years' service. She submitted that Controlling Authority has rightly interpreted and confirmed by the Appellate Authority. For that, none of the authorities have committed any error which require any interference by this Court.

6. I have considered the submissions made by both the learned Advocates and have also perused the order passed by Controlling Authority as well as Appellate Authority in respect to these three matters. I have gathered the individual facts of each case relating

to each matter. The question is that interim period should be considered as a qualifying service or not. That was decided in settlement by the Corporation and recognized Union. Initially that period was not included in qualifying service which was amended with the consent of Corporation as well as recognized Union in settlement dated 26th February,1971. Item No.5(b)(2) where it was necessary to receive gratuity or to become eligible for gratuity, a criteria of five years' period is required to be satisfied by the workman. That does not mean that at the time of reinstatement, he should have to satisfy this criteria because at the time of reinstatement he is not asking any amount of gratuity, but when his service is terminated / resignation / retirement, he become entitled to receive amount of gratuity, but that was not the stage when he was reinstated in service by the Corporation in pursuance of the order passed by the Appellate Authority or Labour Court. Therefore, question was not arose to consider the qualifying service at the time of reinstatement and, therefore, the submissions made by Ms.Mandavia is

contrary to the scheme and object of the settlement and interpretation which has been made by Controlling Authority and confirmed by the Appellate Authority is correct. Bare perusal of terms of settlement suggest that for eligibility, five years' service is necessary, but interim period from date of dismissal to date of reinstatement should have to be considered as a qualifying service for the purpose of gratuity and accordingly, Controlling Authority has rightly examined the matters and granted the continuity of service for amount of gratuity and accordingly, calculation has been made and interest has been granted, which is a statutory compulsion. [See : State of Gujarat Vs. Thakor Hathaji Mohanji reported in 2006 I CLR 479 SC]. For that, controlling authority has no discretionary power to deny legitimate interest to the workman. Therefore, according to my opinion, both the authorities below have rightly interpreted the terms of settlement dated 26th February,1971, Item No.5(b)(2) and, therefore, none of the authorities have committed any error which require any interference by this Court

while exercising powers under Article 227 of the Constitution of India. Hence, there is no substance in the present petitions. Present petitions are dismissed with no order as to costs. Rule discharged. Interim relief, if any, stands vacated. However, it is directed to the controlling authority at Rajkot, in respect to each petition, to pay the amount of gratuity with interest which has been deposited by the Corporation to the concerned respondent by Account Payee Cheque after proper verification.

(H.K.RATHOD,J.)

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